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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAR 29 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Telephone Number Portability

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CC Docket No. 95-116  
RM 8535

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**Further Comments of the United States Telephone Association**

The United States Telephone Association (USTA) submits these further comments in response to the Public Notice issued in the above-referenced proceeding.<sup>1</sup> USTA is the principal trade association of the local exchange carrier (LEC) industry. USTA represents over 1100 LECs, with a wide variety of company sizes within its membership. These comments respond to the Commission's request for comment on the effects of passage of the Telecommunications Act of 1996 on the issues raised in the NPRM in this docket.

**INTRODUCTION**

The NPRM in this proceeding, released in July 1995, was a positive step by the Commission to begin the process of developing a technically feasible and economically reasonable long-term plan for local number portability. Passage of the Telecommunications Act of 1996 ("1996 Act") has little effect on the issues raised in the NPRM. The 1996 Act reaffirms several key perspectives on number portability: 1) interim local number portability solutions are sufficient to promote local competition, and state commission oversight of interim solutions should continue; 2) regardless of whether the decision is made by state or federal regulators, the threshold decision of when a carrier must offer number portability should be determined by the introduction of actual competition; 3) the obligation to provide number portability applies to all local exchange carriers, incumbents and new entrants, and the costs should be borne on a

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<sup>1</sup>In the Matter of Telephone Number Portability, CC Docket No. 95-116, DA 96-358 (Released March 14, 1996); see Id., FCC 95-284, (Released July 13, 1995) ("NPRM").

competitively neutral basis; 4) the Commission should take a lead role in developing a long-term solution which is flexible enough to accommodate changes in the industry.

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**I. The 1996 Act Recognizes that Interim Solutions Are Sufficient to Promote Competition**

The NPRM requested comment on the extent of deployment of interim solutions, and on whether those solutions are sufficient to promote competition. NPRM, para. 55. USTA noted that a number of LECs were then providing service provider portability; that number has since increased. These interim methods of providing service provider portability have been accepted by state PUCs, and are adequate to meet the needs of both existing LECs and competitive new entrants. There is no need for the Commission to increase its involvement in interim methods. Rather, as USTA encouraged the Commission to do, the Commission must take the lead and focus its resources on a long-term solution.

A number of provisions of the 1996 Act support the conclusion that interim solutions are sufficient to promote competition. In the “competitive checklist” for Bell Operating Company in-region interLATA market entry, those LECs are simply obligated to offer “interim number portability, through remote call forwarding, direct inward dialing trunks, or other comparable arrangements,” until the Commission issues regulations pursuant to Section 251. See 1996 Act, Section 271(c)(2)(B)(xi). Congress would not have provided for interim solutions as an element of the competitive checklist if it believed interim solutions would not be sufficient to promote competition. Approval of interim solutions for purposes of the “competitive checklist” is persuasive evidence that Congress concluded that interim solutions are useful and will promote competition. The Act places responsibility for developing the long-term number portability solution on the Commission, Section 251(b)(2), while establishing that interim solutions are adequate. Thus, the Act suggests that the Commission should focus its attention on developing a long-term number portability solution.

## **II. The Decision as to When Implementation of the Long-Term Solution Developed by the Commission is Technically Feasible May Be Made by State Regulators.**

One key impact of the 1996 Act is to accelerate the development of local competition by, inter alia, eliminating all state entry barriers. Section 253. Additionally, the 1996 Act specifies that local exchange carriers have the duty to offer local number portability, to the extent technically feasible, in accordance with requirements prescribed by the Commission. 1996 Act, Section 251(b). In its initial comments, the Commission raised the issue of the timing of implementing a long-term local number portability solution. NPRM, para. 64. USTA suggested that each company's implementation schedule should be driven by the determination of the state regulators in their operating area that number portability is appropriate for that state, as part of state commission consideration of issues related to local competition. Comments of USTA at 5.

If the Commission undertakes to establish federal deadlines for LEC implementation of the long-term number portability, the Act's acceptance of interim solutions as sufficient to promote local competition should guide the Commission.<sup>2</sup> Additionally, the Commission should establish conditions of implementation which will minimize inefficient investment. For example, the Commission should require that a LEC have received a bona fide request that it provide number portability. There is no basis to require the deployment of number portability where there is no competition present. This is not a matter of policy - it is a matter of simple logic. Without a bona fide competitor it is technically impossible to provide customers with the ability to switch carriers.

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<sup>2</sup>The Act does not require that the Commission make the determination as to when a particular LEC must deploy the long-term number portability solution. USTA believes that the 1996 Act permits state regulators to make the determination as to when implementation of the long-term plan is "technically feasible" for a particular LEC, whether the LEC is an incumbent or a competitive new entrant. State authority over this determination would recognize the fact that state regulators are responsible for local rates (which would likely be affected by the significant costs of number portability). For example, while the Commission has exclusive jurisdiction over the United States portion of the NANP, the 1996 Act expressly permits delegation of portions of that authority to State Commissions. Section 251(e)(1). Given the role of State commissions in reviewing interconnection agreements, Section 252(a)(1), and petitions for modifications filed by rural carriers, Section 251(f)(2), state commissions will likely be in the best position to determine when competition has developed such that long-term number portability must be made available.

Similarly, Commission rules should permit LECs to fulfill their obligations under the Act on an exchange-specific basis, depending on the scope of the request. Also, the Commission's rules should permit a LEC sufficient time to implement the long-term solution in a cost-effective manner. Finally, implementation of number portability by rural telephone companies should recognize the unique circumstances faced by those companies. Minimizing the costs associated with the provision of number portability will serve the Act's goals of promoting local competition.

The 1996 Act imposes on LECs the duty to implement the long-term plan developed by the Commission when "technically feasible." Section 251(b); see Section 3 (a)(46). The question of whether a particular LEC is technically capable of deploying the long-term number portability solution necessarily involves questions of whether the LEC is capable of making the investments necessary.<sup>3</sup> At the same time, the Act imposes an affirmative obligation on all LECs to offer at least an interim number portability solution on request, including a request from an incumbent to a new entrant LEC, where technically feasible. These considerations should be taken into account in addressing the timing of number portability deployment.

### **III. The 1996 Act Reaffirms that Local Number Portability Requires Cooperative Involvement of Both Incumbent and Competitive LECs**

Section 251(e)(2) of the 1996 Act explicitly provides that the cost of establishing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." Similarly, Section 251(b)(2) of the 1996 Act obligates all local exchange carriers, both incumbent and new entrants, to offer number portability.

To the extent that competing LECs offer each other number portability in a particular area,

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<sup>3</sup>For example, the Commission has found that the public interest is served where LECs avoid inefficient cost expenditures that may lead to additional costs to all ratepayers or reduced opportunities for provision of new services. See Order, CC Docket 91-281, DA 95-2415 (December 7, 1995). Similarly, inefficient deployment of number portability capabilities may lead to unnecessary costs to ratepayers, or reduced opportunities to deploy new capabilities, both of which could impede local competition.

it is reasonable to recover related costs from all users within that area. Of course, in areas where local number portability is not available, or where the long term solution has not yet been implemented, neither service providers nor customers should contribute to the costs of number portability offered elsewhere. By imposing the duty to provide number portability on all LECs, the 1996 Act supports the decision that the costs of a long-term number portability solution should be shared by all parties using the system. See NPRM, para. 54. Until the technical characteristics of the long-term number portability solution are known, we can only determine the most general characteristics of an appropriate cost recovery process. However, both the cost recovery process and the technical characteristics of the long-term solution should take into account the 1996 Act's framework for introducing local exchange competition, placing portability obligations on all LECs. See Section 251(e)(2).

## CONCLUSION

The Telecommunications Act of 1996 does not substantially change the proper role for the Commission in developing a long-term local number portability solution. The Commission should focus its resources on developing an efficient long-term solution, recognizing that a variety existing interim solutions are available. Regardless of whether the Commission or state regulators make the determination, the Act does not require LECs to implement interim or long-term number portability solutions until customers in that LEC's area have the ability to switch carriers.

Respectfully submitted,

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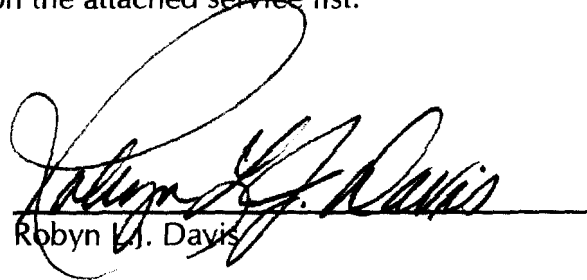
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March 29, 1996

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on March 29, 1996 further comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
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